

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1922 of 1982

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN

AND

MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

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2. To be referred to the Reporter or not? No.

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

ADALAJ GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL for Petitioners

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.S.SHAH

Date of decision:-1/12/98.

C.A.V. JUDGEMENT (Per Shah, J.)

This petition under Article 226 of the Constitution of India has been filed by Adalaj Gram Panchayat through its President and also by some of the residents holding the lands within the limits of Gram Panchayat for challenging the constitutional validity of the provisions of Sections 3, 4, 5, 6 and 11 of the Gujarats New Capital (Periphery) of Control Act, 1960 (hereinafter referred to as the Act) and the provisions of Rules 4 and 7 of the Gujarat New Capital (Periphery) Control Rules, 1967(hereinafter referred to as the Rules.

The petitioners have also challenged the notification dated 25-3-1982 issued by the State Government under the provisions of the Act and also the "Yadi" dated 24-3-1982 issued by the State Government prohibiting the grant of permission for nonagricultural use of the agricultural lands within the limits of the villages included in the areas covered by the aforesaid notifications applying the provisions of the Act to them.

2. Before narrating the contentions urged by the learned counsel for the petitioner it is necessary to set out the relevant facts and the relevant statutory provisions.

3. Petitioner no. 1 Adalaj Gram Panchayat is the Gram Panchayat constituted under the provisions of the Gujarat Panchayats Act, 1961 (hereinafter referred to as the Panchayat Act). The petitioner Panchayat collects the taxes on buildings and lands within the limits of village Adalaj and it is one of the sources of revenue of the petitioner Panchayat. Petitioner no. 2 is an agriculturist and is carrying on agricultural operations on the lands within the limits of Adalaj village. Petitioner no. 3 is carrying on the business of manufacturing bricks and has a brick-kiln within the limits of Adalaj village. Petitioner no. 4 holds the agricultural lands in Adalaj village and his application for permission to use the lands for nonagricultural purpose was pending at the time of filing of the petition.

4. The State of Gujarat was formed with effect from 1-5-1960. The State Government decided to construct a new capital of Gujarat at Gandhinagar. On 23-6-1960 the State Legislature enacted the Gujarat New Capital (Periphery) Control Act, 1960 to provide for controlling and regulating development in the periphery in the New Capital of the State of Gujarat i.e. the area adjacent to and within a distance of five miles on all sides from the outer boundary of the new capital Gandhinagar

comprising such areas as the State Government may, from time to time, by notification in the official Gazette, specify in that behalf. Thus, while the Act is applicable to the entire area of five miles on all sides from the outer boundary of Gandhinagar, control and regulation of development is applicable only to such areas as are covered by the Notification issued by the Government under Sub-section-(1) of Section 3 of the Act, which reads as under :

"Declaration of controlled area / (1) The State Government may, by notification in the official Gazette, declare the whole or any part of the area to which this Act extending to be a controlled area for the purpose of this Act.

Sub-Section (2) of Section 3 of the Act lays down the procedure to be followed before making a declaration under the aforesaid provision. Section 4 of the Act reads as under :

"4. Publication of plans of controlled area.
(1) The Collector shall within three months of the declaration under Sub-section (1) of section 3 deposit, at his office and at such other places as he considers necessary, plans showing the area declared to be a 'controlled area' for the purpose of this Act indicating therein the nature of the restrictions applicable to the controlled area."

Section 5 of the Act, it has been made the principal target of the challenge in the present petition which reads as under :

"5-The Collector shall not refuse permission to the erection of a building which was in existence on the date on which the notification under sub-section (2) of section 3 was made, nor shall he impose any conditions in respect of such erection unless he is satisfied that there is a probability that the building will be used for a purpose or is designed in a manner other than that for which it was used or designed on the date on which the said declaration was made."

Section 6 of the Act prescribes the procedure for granting permission referred to in Section 5 and also the time limit of three months for grant or refusal of the permission. The Collector has been granted discretion to make inquiry before granting or refusing to grant such

permission and also to impose such conditions as he considers reasonable having regard to the circumstances of the case and interest of the general public. Sub-section (4) and (5) of Section 6 also provide that the Collector shall not refuse permission to the erection of a building if such building is required for purpose subservient to agriculture nor shall the Collector refuse permission to the erection of building which was in existence on the date on which the provisions of the Act are made applicable to the concerned area nor shall he impose any condition in respect of such erection unless he is satisfied that there is probability that the building will be used for a purpose or is designed in a manner other than that for which it was used or designed on the date on which the Act was made applicable to such areas. Sub-section (1) of Section 11 of the Act reads as under :-

"11 (1) - No land within a controlled area shall, except with the permission of the State Government, be used for purposes other than those for which it was used on the date of notification under sub-section (2) of section 3; and no land shall be used for the purpose of a charcoal kiln, except under, and in accordance with the conditions of a licence from the Collector on payment of such fees and under such conditions as may be prescribed."

Sub-Section (2) and (3) of Section of 11 provide for renewal of licence and immunity from payment of compensation for any injury, loss or damage caused by refusal to renew the licence.

5. Rule 4 of the Rules framed under the Act prescribes the form and contents of plans under section 4 of the Act and relevant portion thereof reads as under:-

"4. Form and contents of plans under Sec. 4 - The plans shall show the exact boundary of the controlled area, all the revenue villages with their boundaries in the controlled area, all existing and proposed public roads indicating right of ways and shall be to a scale of C= 640 M. the controlled area under the plans shall be subject to the following restrictions :-

(a) Only one building shall be allowed on one survey number or sub-division thereof.

(b) The total area covered by the building

shall not exceed two percent of the area of the survey number of sub-division thereof or 300 sq. metre whichever is less.

- (c) Only one access shall be permitted from one survey number of sub-division thereof to a road and no gate shall be more than 5 metre wide. The proposed access road shall be so constructed as to obstruct the free flow of rain water on the road sides.
- (d) The building shall not be constructed within the controlled line as fixed by the Government from time to time of any existing or proposed public road, whichever is more.
- (e) No building shall have more than two storeys.
- (f) the building shall be at a minimum distance of 8 metres from the boundaries of the survey number or sub-division thereof on which it is constructed except on the road side where the minimum distance shall be 30 metres from the boundary of the road or the 'controlled line' as fixed by the Government from time to time, of the road whichever is less.
- (g) No land within 800 metres from the boundary of any public road, or the controlled line as fixed by the Government from time to time, whichever is more, joining the capital side shall be used for the purpose of charcoal kiln, pottery kiln, lime kiln, brick field or brick-kiln.

Exception :- above restriction shall not apply to those survey numbers of a village which are allowed by Government to be used for construction of residential buildings for the inhabitants of the village or for construction of building for public purpose."

Rule 7 of the Rules prescribes the procedure for grant of licence u/s 11 of the Act.

6. By the notification dated 16-10-1969 the State Government specified the areas comprising 12 villages in Gandhinagar Taluka as the areas comprising the site of the permanent capital of the State of Gujarat. By the notification dated 6-5-1965 u/s 3 (1) of the Act the

whole of the area to which the Act extends was to be a 'controlled area' for the purpose of the Act. Subsequently, by the notification dated 20-10-78 the Government specified only the areas comprised of the villages mentioned in the notification dated 27-10-78 as the controlled area for the purpose of the Act. Village Adalaj was accordingly not included in the controlled area. However, thereafter by the notification dated 25-3-1982 (Annexure-A to the petition) the State Government included village Adalaj in the controlled area as provided in Section 3 (1) of the Act. The notification provided that the controlled area shall comprise of 39 villages including Adalaj. The petitioners challenge the aforesaid notification dated 25-3-1982. The petitioners have also challenged the "Yadi" dated 24-3-1982 (Annexure B to the petition) by which the State Government has instructed the District Development Officer, Gandhinagar not to grant permission until further instructions for changing user of the agricultural land for nonagricultural purpose in respect of the agricultural land situated in the controlled area.

7. The aforesaid provisions of the Act, the Rules and the notifications are challenged in the petition on the following grounds :

- (i) The provisions of the Act and the Rules are violative of the fundamental right under Article 14 of the Constitution of India as they provide discriminatory treatment to the villages and inhabitants of the villages in the controlled area. The development is permitted in the capital city of Gandhinagar and also in the areas beyond distance of five miles from Gandhinagar. There is no justification for giving discriminatory treatment to the villages in periphery of the new capital by controlling their development.
- (ii) The provisions of Section 3 of the Act suffer from the vice of excessive delegation of legislative power as the Act confers arbitrary powers to determine which area shall be subjected to the special control and regulation on development. Section 4 of the Act confers the powers upon the Collector to impose the restrictions on development within the controlled area and does not provide for any guidance or guidelines as to nature of the restrictions which may be imposed by the Collector. Section 4 also suffers from vice of excessive delegation of

legislative power. Section 5 and 6 of the Act confer upon the Collector absolute and arbitrary powers of granting or refusing the permission and also confer upon the Collector naked, arbitrary, uncontrolled and unguided powers. Therefore, the provisions of Section 5 and 6 also suffer from vice of excessive delegation of legislative power.

(iii) Section 11 of the Act empowers the State Government to freeze all development of the land in the controlled area. Section 11 of the Act further confers arbitrary powers on the State Government for granting or refusing permission u/s 11 of the Act. Therefore also these provisions suffer from excessive delegation of legislative power.

(iv) Rule 4 of the Rules restricting construction of building to 2 % of the area of survey number or sub-division imposes unreasonable restrictions on the citizen's right to use and enjoy their properties as the said Rule has no nexus and co-relation with the location of the land in the periphery of the new capital of State of Gujarat and hence Rule 4 is ultra vires the provisions of the Act.

(v) Rule 7 of the Rules confers arbitrary powers upon the Collector to grant or refuse licence under Section 11 of the Act in view of the provisions of Section 152 of the Gujarat Panchayats Act, 1961 conferring on the Panchayats the power to grant permission for nonagricultural use of agricultural land u/s 65 of the Bombay Land Revenue Code, 1879, such power stands transferred to the District Development Officer. The Government has, therefore, no power to fetter the discretion of the District Development Officer of the District Panchayat in the matter of grant or refusal of non-agriculture use permission.

8. On behalf of the State of Gujarat an affidavit-in-reply has been filed by V.T. Purohit, Senior Town Planner. The principal submissions made in the affidavit-in-reply are as under :

(i) The prime object of the Act is to provide for controlling and regulating development in the periphery of the new capital and the sole object

of the Act is to provide and maintain the order and decancy in the development around the capital so that identity and integrity and high architectural and planning qualities of the capital city are not damaged or disfigured and continue to be so into the surrounding area of the capital. In order to achieve the said purpose, a master plan with proper regional linkages with the surrounding area has been prepared. The Act has been enacted with a view to regulate the development of the area in question and it is, with a view to achieve this purpose that an elaborate procedure and machinery has been prescribed in and under the said Act.

(ii) The provisions of the Act are similar to the provisions of the Gujarat Town Planning and Urban Development Act, 1979 (hereinafter referred to as the Town Planning Act) which has been applied to six major cities and 82 Gram Panchayats, Nagar Panchayts & Municipalities in the State. The scheme of the Town Planning Act is to see that the city to which the said Act applies, and the rural areas around the city do not expand in unplanned manner and proper planning and development is carried out.

(iii) The present Act is enacted for orderly development in the periphery of the new capital. Similarly, Periphery Control Act has been enacted for Chandigardh also, the first new town in India after independence. The area covered under the said Act also extends upto five miles' limit beyond the city.

(iv) The process of urbanisation in the State is comparatively fast and rapid. It is likely that the villages surrounding the urban areas, specially Gandhinagar, cannot retain their independent and isolated existence and character and there are chances that the growth of villages might overspill beyond their limits and grow in haphazard and unplanned manner. The surrounding rural area of the controlled area are potential urban areas and, therefore, it is necessary that the said areas are regulated, controlled and developed with scientific, technical and socio-economic considerations.

9. In the affidavit-in-reply it is further pointed out that earlier in the year 1965 the entire Gandhinagar

District was declared as the controlled area. Consequent upon the delimitation of Ahmedabad Urban Development Authority (AUDA) area in January 1978 which included 37 villages of Gandhinagar District and the representations from the farmers of the surrounding villages, the controlled area was reduced to 23 villages. Villages Koba and Adalaj were excluded from the controlled area. A few Non-agriculture use permissions in the said villages were given without due regard to the planning principles.

Due to the strategic location of two villages Adalaj and Koba, number of speculators obtained N.A. permission in 130 cases within a short duration of one year from March 1981 to March 1982 and in Adalaj village alone 98 N.A. permissions were granted. Only 13 applicants started construction and prices of the lands spiralled due to activities of speculators. Even otherwise the construction was started in unplanned manner along the highways. The Government got alerted and came out with the notification dated 25-3-1982 u/s 3(2) of the Act to re-include 13 villages including Adalaj in the Controlled Area and issued final notification u/s 3(1) of the Act on 22-7-1983. Even after issuing the aforesaid notifications, the Government did take into account the representation of the village people for development of their lands. So far as Adalaj village is concerned, the area upto 200 metres all round the village has been made eligible to get N.A. permission on account of relaxations granted by the Government.

10. At the hearing of this petition, Mr. Vakil learned counsel for the petitioner submitted that there was no ground for singling out the area of five miles around Gandhinagar for the purpose of imposing the restrictions under the Act which resulted in freezing the development of the area and which has also affected the revenue of petitioner No. 1 - Adalaj Gram Panchayat as it is not able to get sizable amount of property tax on account of lack of developmental activities. Mr. Vakil further submitted that consequences of operation of the restrictions imposed by the Act are acknowledged by the Government also. Mr. Vakil has for this purpose relied on the statement of Minister for Urban Development Mr. Fakirbhai Vaghela on the floor of the House to the effect that on account of the restrictions imposed under the Act the villages in the controlled area have not developed and therefore for orderly development of Gandhinagar city and surrounding 39 villages which are comprised in the controlled area under the Act the Government has decided to constitute Gandhinagar Urban Development Authority

(GUDA).

Mr. Shelat learned Addl. Advocate General has placed on record the Notification dated 12-3-1996 constituting Gandhinagar Urban Development Authority (GUAD) for Gandhinagar and the 39 villages in its periphery including Adalaj.

11. Having heard learned counsel for the parties and having regard to the averments and submissions made in the affidavit-in-reply filed by the Sr. Town Planner, we are of the view that there is no substance in the challenge made by the petitioner to the constitutional validity of the provisions of the Act and the Rules. The area surrounding the new capital of the State which may be called "new capital periphery", for the sake of convenience, does constitute a separate class. In fact, the entire area comprising of the present Gandhinagar city earlier comprised of agricultural lands and the same were acquired for project of the new capital of Gujarat State viz. Gandhinagar. In order to provide that as and when the capital expands the and additional lands are required for extension of the new capital, the areas in the capital periphery were required to be subjected to certain restrictions in order to prevent haphazard growth of the potential urban areas around Gandhinagar.

Mr. Vakil's contention that there are no restrictions for developmental activities within city of Gandhinagar and therefore there can be no restriction in the periphery area, cannot be accepted for the simple reason that formation of new capital city would necessarily require grant of permission for developmental activities on lands hitherto used for agricultural activities (within Gandhinagar), subject to the Rules and Regulations for such development of the lands but there would be no need to grant such permission for development of periphery areas which comprise of agricultural lands. There would have been haphazard growth in the periphery where there was no regulatory authority except a Gram Panchayat which could not be expected to look beyond its nose. Moreover, there are no absolute restrictions and prohibitions in the construction activities in the new capital periphery area as limited development activities are permitted.

12. The preamble to the Statute and other provisions of the Act contain the broad legislative policy, which is already pointed out above. Moreover, consistent with the object of the Act the State Government has provided the detailed guidelines in Rule 4 of the Rules quoted

hereinabove. Hence it is not possible to hold that the provisions of the Act under challenge suffer from the vice of excessive delegation of legislative power.

13. We are not required to pursue the above discussion, however, in view of the subsequent development pointed out by the learned counsel for the parties. Since the Government of Gujarat has constituted the Gandhinagar Urban Development Authority under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 for the entire area comprising of the city of Gandhinagar as well as all the 39 villages in periphery which are presently comprised in the controlled area u/s 3 of the Act, it is not necessary to examine in further detail the contentions urged on behalf of the petitioners.

14. At this stage it would not be out of place to refer to the relevant provisions of the Gujarat Town Planning and Development Act. Section 22 of the Town Planning Act provides for declaration of Urban Development Areas and Urban Development Authority. Section 9 read with Section 25 of the Town Planning Act provides that as soon as may be after the constitution of development authority for any development area the area development authority shall, not later than three years after the declaration of such area as a development area or within such time as the State Government may, from time to time, extend, prepare and submit to the State Government a draft development plan for the whole or any part of the development in accordance with the provisions of the Town Planning Act. It is further provided in the said Statute that if a draft development plan is not prepared and submitted to the State Government by the development authority within the aforesaid period of three years or within the extended period as aforesaid under that sub-section, an officer appointed by the State Government may prepare and submit the draft development plan to the State Government. Sections 10 to 21 of the Town Planning Act, contain further detailed provisions for preparation and publication of the draft development plan and consideration thereof by the Urban Development Authority, submission of draft development for sanction u/s 16 of the Act and power of the State Government to sanction such plan u/s 17 of the Act.

In view of the aforesaid provisions of the Town Planning Act, which will be applicable to Gandhinagar as well as to the surrounding 39 villages including Adalaj which were included in the controlled area under the Gujarat New Capital (Periphery) Control Act, 1960 it is

clear that the grievances urged on behalf of the petitioners for getting permission for developmental activities can be considered for redressal as and when the development plan is prepared by Gandhinagar Urban Development Authority.

15. Mr. Vakil, however, submitted that the petitioners' grievances shall not stand redressed even after preparation of the development plan and sanction thereof by the State Government because the petitioners would continue to be subjected to the restrictions contained in the periphery Act. In view of the provisions of Section 117 of the Town Planning Act containing the nonobstante clause, we do not think that the plan published u/s 4 of the Act for the controlled area under the periphery Act would override the Development Plan to be prepared and sanctioned under the Town Planning Act. Moreover, the statement made by the Minister for Urban Development on the floor of the Legislative Assembly also indicates that the constitution of the Gandhinagar Urban Development Authority is resorted to for the specific purpose of ensuring an integrated development of Gandhinagar city as well as the 39 surrounding villages including Adalaj.

16. In the result while negating the contentions raised on behalf of the petitioners on the questions of constitutional validity of the Act, the Rules, the Notification dated 25-3-1982 and the "Yadi" under challenge, we are disposing of this petition with a direction to the State Government to require the Gandhinagar Urban Development Authority to prepare the draft development plan in accordance with the provisions of the Gujarat Town Planning and Urban Development Act, 1976 as expeditiously as possible and in any case within six months from the date of receipt of a certified copy of this judgment.

17. Subject to the above direction, the petition is dismissed and the Rule is discharged with no order as to costs.